IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.17003 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VRUSHTI FINANCIAL SERVICES PRIVATE LIMITED

Versus

ASSISTANT PROVIDENT FUND COMMISSIONER & ANR.

Appearance:

1. Special Civil Application No. 17003 of 2004

MR. DHARMESH V. SHAH for Petitioner

MR. P.J. MEHTA for Respondent Nos. 1-2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 23/02/2005

ORAL JUDGEMENT

1. Rule.

Mr.P.J.Mehta, learned Advocate appearing for respondents Nos.1 and 2, waives service of Rule.

At the request of Mr.Dharmesh V.Shah, learned Advocate for the petitioner, and with the consent of the learned Advocate for the respondents, the matter is taken

up for final disposal today.

2. In the present petition, the petitioner prayed for quashing and setting aside the impugned order dated 24th July, 2003 passed by respondent no.1, Assistant Provident Fund Commissioner, under Section-7(A) of the Provident Fund and Miscellaneous Provisions Act, 1982 (hereinafter referred to as "the Act" for short), and notice dated 13th December, 2004 issued by respondent no.2, Enforcement Officer - Recovery Officer, produced at Annexure-A collectively to the petition.

3. The learned Advocate for the petitioner, submitted that the impugned order was passed without taking into consideration the case of the petitioner and the documents, which were produced before the authorities by a list, a copy of which is produced at Annexure - B to the petition. He submitted that the authority did not take into consideration any of those documents and passed order, which is challenged in this petition. The learned Advocate for the petitioner further submitted that due to change of address of the petitioner, the petitioner was not aware of the impugned order passed by the Provident Authorities and the subsequent proceedings initiated by the Authorities. The learned Advocate, therefore, submitted that the impugned order is required to be quashed and set aside and the matter be remanded to the Provident Fund Authorities for affording the petitioner an opportunity of hearing.

4. Mr.P.J.Mehta, learned Advocate for the respondent-Authorities, has filed an affidavit-in-reply. He submitted that the petitioner did not care to inform the respondent-Authorities about the change of address.

5. Having heard the learned Advocates for the parties and having gone through the record of the case, it is clear that the respondent-Authorities are not able to come out with any justifiable ground for which they did not take into consideration the documents submitted by the petitioner. The factor which weighs with the Court is that even, according to the record of the respondent-Authorities themselves, the employees of the petitioner had filed their claims before the respondent-Authorities and the respondent-Authorities have paid them. The matter requires consideration. The impugned order passed by the authorities is ex parte and hence, violative of the principles of natural justice.

6. In the result, the order and the notice challenged in this petition produced at Annexure-A

collectively, dated 24th July, 2003 and 13th December, 2004 are hereby quashed and set aside. The matter is remanded to the Assistant Provident Fund Commissioner, Ahmedabad to decide afresh after giving an opportunity of hearing to the present petitioner and also after taking into consideration the documents, which are listed in Annexure-B to this petition. Rule is made absolute to the aforesaid extent. By way of costs, the petitioner shall pay Rs.10,000=00 to the respondent-Authorities. The matter be decided within 10 weeks from the date of the receipt of this order and till the matter is decided, the respondent-Authorities shall not resort to coercive recovery of the amount in question.

(Ravi R. Tripathi, J.)

kamlesh*